

# SENATE RECORD VOTE ANALYSIS

104th Congress  
1st Session

Vote No. 563

November 8, 1995, 3:31 p.m.  
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## PARTIAL-BIRTH ABORTIONS/Commit to Judiciary

**SUBJECT:** Partial-Birth Abortion Act of 1995 . . . H.R. 1833. Specter motion to commit the bill to the Judiciary Committee with instructions.

### ACTION: MOTION AGREED TO, 90-7

**SYNOPSIS:** As introduced, H.R. 1833, the Partial-Birth Abortion Ban Act of 1995, will prohibit partial-birth abortions unless the physician reasonably believes a partial-birth abortion is necessary to save the life of the mother and no other procedure will suffice for that purpose. The term "partial-birth abortion" will be defined as an abortion "in which the person performing the abortion partially vaginally delivers the living fetus before killing the fetus and completing the delivery." Caesarean-section and hysterotomy abortions, and abortions in which the fetus is killed prior to being moved into the birth canal will not be banned. A person who performs an illegal partial-birth abortion will be subject to fines or imprisonment for up to 2 years, or both. The mother of the aborted fetus will be exempt from prosecution. In addition, the person performing the abortion will be liable for civil damages to the father of the aborted child, and, if the mother is under 18 years old, the maternal grandparents of the child. A person who performs a partial-birth abortion will be able to establish an affirmative defense against both criminal prosecution and civil actions if, according to a preponderance of the evidence, that person reasonably believes that it is necessary to save the life of the mother and no other procedure will suffice for that purpose.

During debate, Senator Specter moved to refer the bill to the Judiciary Committee with instructions for it to report the bill back with amendments, if any, within 19 days after holding at least one hearing on it.

**Those favoring** the motion to commit contended:

Argument 1:

Criminalizing so-called partial-birth abortions will be a major step. We should hold hearings to make sure that it is not a misstep.

(See other side)

YEAS (90)				NAYS (7)		NOT VOTING (2)	
Republican (45 or 87%)		Democrats (45 or 100%)		Republicans (7 or 13%)	Democrats (0 or 0%)	Republicans (1)	Democrats (1)
Abraham	Jeffords	Akaka	Inouye	Coats		Lugar <sup>2</sup>	Bradley <sup>4</sup>
Ashcroft	Kassebaum	Baucus	Johnston	Cochran			
Bennett	Kempthorne	Biden	Kennedy	DeWine			
Bond	Kyl	Bingaman	Kerrey	Faircloth			
Brown	Lott	Boxer	Kerry	Frist			
Burns	Mack	Breaux	Kohl	Gramm			
Campbell	McCain	Bryan	Lautenberg	Helms			
Chafee	McConnell	Bumpers	Leahy				
Cohen	Murkowski	Byrd	Levin				
Coverdell	Nickles	Conrad	Lieberman				
Craig	Pressler	Daschle	Mikulski				
D'Amato	Roth	Dodd	Moseley-Braun				
Dole	Santorum	Dorgan	Moynihan				
Domenici	Shelby	Exon	Murray				
Gorton	Simpson	Feingold	Nunn				
Grams	Smith, Bob	Feinstein	Pell				
Grassley	Snowe	Ford	Pryor				
Gregg	Specter	Glenn	Reid				
Hatch	Stevens	Graham	Robb				
Hatfield	Thomas	Harkin	Rockefeller				
Hutchison	Thompson	Heflin	Sarbanes				
Inhofe	Thurmond	Hollings	Simon				
	Warner		Wellstone				

#### EXPLANATION OF ABSENCE:

1—Official Business  
2—Necessarily Absent  
3—Illness  
4—Other

#### SYMBOLS:

AY—Announced Yea  
AN—Announced Nay  
PY—Paired Yea  
PN—Paired Nay

We describe ourselves as pro-choice, but that does not necessarily mean that we are going to oppose this bill. Before we make a final decision, we need to know all the facts. Once we have given this issue consideration, we may in fact find that criminalizing some partial-birth abortions is not enough; perhaps other procedures should also be limited. Some Senators who are caught up in the emotion surrounding this procedure are not pleased with our deliberative pace, but we think ultimately that holding hearings will prove useful.

Some Senators are under the impression that this motion to commit has been made in an attempt to kill the bill. Perhaps that motivation drives some Senators, but we assure our colleagues that our intent in making this motion is simply to gather facts so we can make a more informed decision. The motion is very limited--the Judiciary Committee will have to report the bill back within 19 days. The fact that the Judiciary Committee has 3 staunchly pro-choice Republicans on it does not indicate that the intent is to kill the bill in committee. The motion instructs the Committee to report the bill back, plus it is important to note that not all the Judiciary Committee Democrats are staunchly pro-choice.

We also would not be surprised to see it reported back with amendments, considering the numerous issues involved. For instance, our colleagues insist that there are not conceivable circumstances that a doctor would have to use this method of abortion in an emergency in order to save the life of the mother. They tell us that in most cases there is not even a medical problem for the mother or the fetus that indicates a need for an abortion. We would like to hear expert testimony on that claim. Further, our colleagues tell us that in the event that life-of-the-mother cases were to arise, their bill would give doctors adequate protection to perform the necessary abortions. Again, we would like to hear the testimony of legal and constitutional experts on this matter.

Other issues that need to be looked into include whether there is really something unique about this type of third-trimester abortion. Other common methods of late-term abortion include saline abortions, caesarean section abortions, and dilation and evacuation abortions. Is it more acceptable to destroy a fetus of the same gestation as long as it is entirely in the womb? If, in a C-section abortion, the fetus started to breath, could the doctor legally strangle the fetus before lifting it out of his patient? If, in a dilation and evacuation abortion, a fetus's leg accidentally kicked down into the birth canal, could the doctor then be sued for an illegal partial-birth abortion? Yet another question which could be carefully examined in a hearing is whether the right to an abortion is more than a right not to be pregnant, but is also a right to have one's fetus destroyed. If the fetus can live outside the mother, does it have a right to live, or does a woman, because she is still carrying it, have a right not to allow it to be brought into the world?

Despite the rather apparent suspicions of some of our colleagues, we have not decided how we will eventually vote on this bill. We do not have all the facts, and are not willing to make a decision in ignorance. Therefore, we strongly urge our colleagues to join us in supporting the motion to commit, which will give the Senators the facts they need to make an informed choice.

#### Argument 2:

This amendment is another attempt by radical anti-choice extremists to limit the constitutional right of a woman to choose. The procedure our colleagues wish to ban in their never-ending quest to outlaw all abortions is rarely used, but sometimes it must be in order to save a woman's life. Sometimes, rarely, at a late stage in pregnancy, a woman may find out horrible medical news. She may learn, for example, that her baby is grossly deformed and certain to die, and if she continues with her pregnancy the baby may die and deteriorate within her, endangering her life. In such circumstances, the safest way for her to abort may be to have a partial-birth abortion. These babies are wanted babies--women do not casually carry their children into the third trimester and then decide to have abortions. Most Senators are men, and thus will never be in the position of understanding the pain a woman goes through when she must abort her child at the end of a pregnancy.

With one exception, Senators are not doctors, and the one doctor in the Senate, Senator Frist, does not specialize in obstetrics. Though doctors practice obstetrics in their residency rounds, he is by no means an expert. Therefore, who are we to step in when an obstetrician, in his professional judgment, determines that a woman who must have an abortion late in her pregnancy should have a "partial-birth" abortion? This bill would have the Senate, without hearings, criminalize this medical procedure. The criminalization of a medical procedure is unprecedented. Certainly, it sounds horrible the way our colleagues describe it, but they do not talk about some of the women who have come forward to explain why it was necessary for them.

Making a law to criminalize this procedure that should be between a woman and her doctor would be a mistake. Senators cannot play God--they have no right to make this decision. Holding hearings will bring out these points. Therefore, we strongly support holding hearings.

#### **While favoring the motion to commit, some Senators expressed the following reservations:**

Senators who oppose the motion to commit suggest that they know enough about partial-birth abortions to know that they should be outlawed. We emphatically agree with those Senators. We too have heard enough about this sadistic, inhumane method of abortion to know that it must be stopped. Sadly, though, radical pro-abortionists have caught the ear of many Senators, convincing them that Senate hearings should be held before we vote. These pro-abortionists are ready to defend a procedure in which babies from the end of the second trimester through the ninth month, who can already live outside of their mothers, are delivered vaginally except for

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their heads (which are held within their mothers), giving "doctors" room to cut open the back of their heads with scissors so that a vacuum tube can be inserted to suck out their brains. These abortions are not "emergency" procedures--they take 3 days to complete. At the end, a doctor could take one extra second to allow a baby to be legally born, and thus protected from his scissors and suction tube, but instead he keeps the baby's head inside his or her mother, making it legal for him to commit a brutal, unfeeling murder of an innocent baby. These murdered babies are 1 second and 3 inches away from full constitutional protection, but instead they get zero protection. Murdered sadistically and without any anesthetic, they get less consideration than any animal would. Pro-abortionists may be under the impression that the sick details of this type of abortion will not come out in a hearing. Perhaps they think they will get the type of group-think reporting that America's elitist liberal press corps has been giving this issue. They are wrong. America's excuse for reporters may be slavishly pro-abortion, but the American people are not. We guarantee that pro-life Senators will expose the truth that nearly every paper, radio, and television station has carefully hidden from the American public. Lies and propaganda will not prevail. Hearings will show those Senators who are torn by the conflicting claims that partial-birth abortions are absolutely indefensible, whether one is pro-life or pro-choice. The Senate, eventually, will go on record on this issue, and the press will not be able to stop the voters from finding out how Senators have voted. Senators are not an elite group like Supreme Court Justices who can make up constitutional rights and remain free from retribution. We do not object to hearings because hearings will strengthen our cause. On this issue, justice and democracy will eventually triumph. Therefore, in order to expose further the evil, inhumane brutality of partial-birth abortions, we urge our colleagues to vote in favor of the motion to commit.

**Those opposing the motion to commit contended:**

This vote should not be a pro-choice or pro-life issue. In the House, the vote was not about abortion. This bill is not about whether a woman has a right to end her pregnancy, but whether Senators support a method of abortion that is the equivalent of infanticide. We do not need further hearings to find out more than was already revealed in the House hearing on partial-birth abortions; the basic facts are known, and the longer we wait to act on them, the more innocent babies will be brutally murdered. Partial-birth abortions, which take 3 days to complete, are never an immediate matter of life-and-death, and the practitioners of this horrifically evil operation have testified that in 80 percent of the cases they have been involved in the baby that is aborted is perfectly healthy, and that the mother also is in no danger. Further, they have testified that some of those abortions which they said they performed for medical reasons were for such reasons as that the babies had cleft palates, or that they had Downs syndrome. We do not believe that the right to life is reserved for the genetically perfect and healthy. Partial-birth abortions start at 5 months, and are performed through the ninth month.

These babies, if they had the luck to be delivered in the delivery room of a hospital, would be rushed to the premie ward and would likely survive and live normal lives. The partial-birth abortionist, though, is not merely hired to end a woman's pregnancy--he is also hired to make sure that the baby's life is ended as well, and he ends that life without anesthetic by cutting the baby's head open with scissors and suctioning out his or her brains. The purpose of suctioning out the brains is not merely to make it easier to crush the baby's skull; it is to make sure that the baby is dead. He turns the baby around into the breech position, pulls him or her out of the mother except for his or her head, and then he commits a legal murder. If the abortionist instead performed the less time-consuming and easier task of pulling the baby entirely out of the mother, he would go to jail for life or face the death penalty if he then cut open the baby's head, without anesthetic, and suctioned out his or her brains.

Not one Senator or medical expert has denied the fact that the way the abortionist avoids facing murder charges is by keeping the unborn baby's head inside his or her mother. Not one Senator has denied that this method of abortion is a late-term method only that is used right up through the ninth month. Not one Senator has denied the fact that it would take less time to take an extra second by letting the baby's head come out of the mother than it does to commit the abortion. Instead, the defenders of partial-birth abortions have rested their case on three claims: that the procedure is rare; that the baby does not feel any pain because of anesthetic; and that it is only done in extreme circumstances to save the mother's life (and, in the latter case, they have stressed that the babies have "abnormalities").

On the first claim, that partial-birth abortions are rare, we do not see that fact as extenuating, though we certainly hope that it is the case. We hope that it is not a routine practice, though even one such brutal abortion is too many to sanction as acceptable. We have no doubt, obviously, that we are not talking about a majority of the 1.5 million-plus abortions that occur in the United States each year; but the fact that we may be only talking about a minuscule fraction does not in any way save our consciences, nor should it save the consciences of our colleagues. If it is wrong it is wrong, whether it happens 1 time, 100 times, or more each year. With absolute shame as Americans we must report that the evidence we have is that it occurs at least 400 times per year, and that this figure may be only the tip of the iceberg. The New York Times, which promotes abortion with singular zealotry, used data from the National Abortion Federation to estimate that an average of 450 partial-birth abortions are performed each year. The New York Times also indicated that this estimate was far too low when it quoted a physician who spoke on the condition of anonymity, who said "of course I use it, and I've taught if for the last 10 years."

The second claim that our colleagues have made is that the babies whose lives are taken in partial-birth abortions do not feel any pain. These Senators are the same Senators who talk so much about the inability of Members of Congress to make medical judgments.

This inconsistency aside, we note that the expert medical testimony that has been submitted in the House shows that these babies if anything are more, not less, sensitive to pain, and that at best the procedures used by partial-birth abortionists result in either no anesthetic or only a small amount of anesthetic reaching the infant, and that even when the anesthetic reaches the infant, it is not by intent.

The third and main claim of those pro-choice Senators who are determined to commit this bill for hearings is that partial-birth abortions are only committed when the mother's life is in immediate danger and the baby has congenital problems that make his or her survival more than a few days past birth impossible. In making this claim, pro-choice Senators are ignoring the flatly contradictory testimony of abortionists who perform these abortions, as well as the testimony of numerous medical experts who have said that there is never a medical reason that makes a partial-birth abortion necessary to save the life of the mother. For instance, Dr. Haskell, who is one of the two abortionists who has publicly admitted to performing partial-birth abortions (he has said he has personally performed more than 700 since 1993), told the American Medical News with chilling candor that "20 percent are for genetic reasons and the other 80 percent are purely elective." The National Abortion Federation approves of partial-birth abortions for any reason. In anticipation of this debate, it sent a letter to its members which included this defense: "Don't apologize. There are many reasons why women have late abortions . . . lack of money or health insurance, social or psychological crisis . . . " Would our colleagues say these "reasons" would justify the murder of newborn infants? Remember, the only difference between newborn infants and these babies who are aborted is that the abortionist will not allow the delivery of the aborted babies' heads. Does a woman who has a psychological or economic reason for not wanting to have a baby have a right to end that baby's life? That question is the question, like it or not, that is before us.

When the American Medical Association's council on legislation considered this issue its 12 members, every one of them doctors, voted unanimously to endorse this bill as written. When the House considered this bill, a bipartisan coalition of pro-life and pro-choice Members voted to pass the bill. Representatives Gephardt and Moran were among the pro-choice Members who said that this bill was not about being pro-choice when they voted in its favor. Outside of the Senate, people realize that this bill is not about punishing women. They realize that the abortionist alone will face imprisonment for up to 2 years or fines for performing a partial-birth abortion. They can read the plain English of the bill to understand that in the extremely implausible event that a partial-birth abortion is necessary to save the life of the mother (experts in the House hearing testified that no such possibility exists) the doctor cannot be punished.

Discussing partial-birth abortions has not been easy for us. We confess that we did not know that these abortions were taking place until very recently, and we do not offer any excuse for our failure to know. However, we offer no apology to those Senators who are angered that we would publicly describe what they so earnestly support in the most euphemistic of terms. It is a sad commentary on our times that United States Senators would be castigated for daring to tell the truth about partial-birth abortions.

We know that most Senators are strongly to nominally pro-choice, and we know that pro-abortion groups are bringing tremendous pressure to bear on them to support the motion to commit. We also know that the Democratic party, the party that has made being pro-choice a litmus test, has put considerable pressure on its few remaining pro-life Members to vote in favor of the motion to commit. The politics of this issue has made it likely that this motion to commit will succeed. Therefore, most pro-life Members have agreed to support this motion. Their reasoning is that further hearings will strengthen their case by further publicizing the brutality of partial-birth abortions, and that failing to hold hearings will give some Senators an excuse to vote against the bill.

While we understand our colleagues' reasoning, we cannot join them in voting in favor of the motion to commit, because during the delay more abortions such as the following, as described by Beverly Schaefer, will be committed: "I am a registered nurse with 13 years of experience. But one day in September 1993 my nursing agency assigned me to work at a Dayton, Ohio, abortion clinic, and I had often expressed strong pro-choice views to my two teenage daughters. So I thought this assignment would be no problem for me. But I was wrong. I stood at a doctor's side (Dr. Haskell) as he performed the partial-birth abortion procedure--and what I saw is branded forever in my mind. The mother was 6 months pregnant. The baby's heartbeat was clearly visible on the ultrasound screen. The doctor went in with the forceps and grabbed the legs and pulled them down into the birth canal. Then he delivered the baby's body and the arms--everything but the head. The doctor kept the baby's head just inside the uterus. The baby's little fingers were clasping and unclasping. And his feet were kicking. Then the doctor stuck the scissors through the back of his head, and the baby's arms jerked out in a flinch, a startle reaction, like a baby does when he thinks he might fall. The doctor opened up the scissors stuck a high-powered suction tube into the opening and sucked the baby's brains out. Now the baby was completely limp. I never went back to that clinic. But I am still haunted by the face of that little boy--it was the most perfect, angelic face I have ever seen."